NAM National Association of Manufacturers

Comments

On Notice of Availability of Enforcement and Compliance History Online Web Site

By the National Association of Manufacturers

Submitted to the Environmental Protection Agency on
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Executive Summary

On November 20, 2002, the Environmental Protection Agency (EPA) released for public comment its Notice of Availability of Enforcement and Compliance History Online Web Site (ECHO). The EPA requested comment from the regulated community on whether facility reports were accurate and whether the error reporting process was easy to use. The EPA also asked for public comment on whether the site provides meaningful and useful information about the compliance and enforcement program. The National Association of Manufacturers (NAM) is submitting these comments to provide the EPA with the information needed to make ECHO a constructive and accurate information tool for its member companies and the general public.

The NAM appreciates the EPA's request for assistance from the regulated community in providing comments on the ECHO Web site. In fact, the NAM has serious concerns about the accuracy and usefulness of the information currently in the database, as well as the system for correcting errors. NAM member companies have reported errors in a large percentage of their facilities' data on the ECHO Web site. In addition, much of the information currently in the database is presented in a misleading way and does not present useful compliance information to the public. Also, the data correction process is flawed and may not provide for timely corrections to be made.

The NAM makes the following four key recommendations regarding ECHO.

1. The EPA must address the large number of errors in the ECHO database so that the data available on the ECHO site is both accurate and complete.
2. The EPA must take full responsibility for the quality of information that it disseminates and must improve the quality of information about violations, enforcement actions and compliance activities.
3. The EPA must improve its data correction process.
4. The EPA should provide companies the opportunity to review and, as necessary, correct information about their facilities before the information is disseminated on ECHO.

The NAM will address each of these concerns in the attached comments and elaborate on the recommendations to alleviate the concerns. The NAM looks forward to working with the EPA to make improvements to the ECHO system.

COMMENTS OF THE
NATIONAL ASSOCIATION OF MANUFACTURERS
To the
ENVIRONMENTAL PROTECTION AGENCY
Regarding
DOCKET NUMBER FRL-7410-5
On
NOTICE OF AVAILABILITY OF ENFORCEMENT AND COMPLIANCE HISTORY
ONLINE WEB SITE

Introduction

The National Association of Manufacturers (NAM) submits these comments in response to the Environmental Protection Agency (EPA) Notice of Availability of Enforcement and Compliance History Online Web Site (hereinafter, ECHO), as published in the November 20, 2002, *Federal Register*. The NAM is the nation's largest industrial trade association. The NAM represents 14,000 member companies (including 10,000 small and medium companies) and 350 member associations serving manufacturers and employees in every industrial sector and all 50 states.

For NAM member companies, associations and state affiliates, information disseminated by the EPA is a critical management tool used to frame environmental problems and solutions, set priorities and maintain compliance with environmental requirements under various environmental statutes and regulations. The NAM believes that the key to maintaining economic growth while improving our environment lies, first and foremost, in basing environmental priorities on sound science and quality data. Accordingly, the NAM has a vested interest in the EPA's development of an accurate, complete and meaningful environmental compliance information tool, such as ECHO, that will affect a broad array of industry owners and operators, particularly small businesses of various kinds. Our comments will address those general issues of concern presented in the Notice of Availability.

Key Concerns and Recommendations

The EPA must address the high level of errors in the ECHO database so that the data available on the ECHO site is both accurate and complete. It is critical that the data that is available on the ECHO site is both accurate and complete. The EPA is encouraging state and local environmental authorities to use the data contained in the ECHO database to "determine where to focus compliance assistance and/or enforcement efforts." Accuracy and completeness are paramount to appropriate and fair enforcement and compliance activities.

The EPA must take full responsibility for the quality of information that it disseminates and must improve the quality of information about violations, enforcement actions and compliance activities. The ECHO database in its current form does not provide meaningful and useful environmental compliance information to the public. The database does not provide sufficient "context" in terms of the pure

compliance data that is reported for each facility. In addition, the database does not contain sufficient tools to allow a user to determine the "significance" of noncompliance that is noted in the report.

The EPA must improve its data correction procedures. The data correction procedures currently in place must be further developed and refined to make the ECHO database workable. Significant data quality issues exist with respect to the data that is currently posted. While the EPA has established a data correction process, it is unwieldy and may not result in timely corrections being made.

The EPA should provide companies the opportunity to review and, as necessary, correct information about their facilities before the information is disseminated on ECHO. Continual review of the Web site for errors takes away from the primary business of companies and provides no added protection to the environment.

Enforcement and Compliance History Online (ECHO)

On November 20, 2002, the EPA published a new pilot Web tool — Enforcement and Compliance History Online (ECHO) — that gives the public and industry direct access to the environmental compliance records of more than 800,000 regulated facilities nationwide. This Web site includes data that was previously available only through the Freedom of Information Act (FOIA). ECHO will provide the public and industry access to information regarding state and federal permits, inspections, violations, enforcement actions and penalties for facilities regulated under the Clean Air Act, Clean Water Act, and Resources Conservation and Recovery Act, as well as links to state information.

The EPA expects that ECHO will result in several benefits for the public and industry. For example, the EPA anticipates that companies will use ECHO as a tool to monitor the record of compliance under federal environmental laws for their own facilities' compliance. Also, the EPA envisions that ECHO may provide market incentives for regulated entities to be in, or return to, compliance because the public has direct access to company compliance records. As for the public, the EPA hopes that citizens will make better and more informed decisions regarding environmental issues impacting their communities.

Meanwhile, ECHO may provide federal, state, tribal and local governments an important tool to evaluate environmental compliance problems and determine program priorities. The data in ECHO covers a two-year period and is drawn from the following systems: Air Facility System; Permit Compliance System; Resource Conservation and Recovery Act Information System; Integrated Compliance Information System; Facility Registry System; and U.S. Census data.

In addition, to ensure that ECHO's data is of high quality, the EPA and the states conducted a comprehensive data review and established an EPA-state network of "data stewards" to manage, research and correct reported errors, as appropriate. Furthermore, ECHO includes an online error reporting process that allows users to alert the EPA and the states to possible errors.

The EPA should be commended for its efforts to make environmental compliance information available to the public. However, many companies have reported a large percentage of errors in their facilities' data on the new Web site. In addition, much of the information currently in the database is misleading and does not present useful compliance information to the public. Finally, the data correction process is flawed and may not provide timely corrections to be made. These issues are discussed in more detail below.

Discussion

The EPA must address the high level of errors in the ECHO database so that the data available on the ECHO site is both accurate and complete.

Based on a review of the ECHO database by NAM member companies, it appears that the database contains a high level of errors. The types of errors found range from incorrect facility identification information to erroneous postings of noncompliance. While the former type of error is minor and can theoretically be fixed quickly and effortlessly, the latter type of error and its frequency is alarming. It is unacceptable for the EPA to disseminate information that mischaracterizes companies as environmental violators, especially in such a high-profile format.

For example, one company found dozens of errors that included unrelated businesses, old business locations that were divested years ago, improper business names, incorrect addresses, improper compliance status and improper fines. Other companies reported a similar quantity and types of errors. The following constitute only a sampling of the types and frequency of errors cited by NAM member companies:

- One company found errors in data for 22 out of 26 of its facilities
- Listed as "in violation" during periods where there was no violation
- Incorrect individual pollutant amounts in wastewater permit discharge monitoring reports section
- Compliance schedules listed as "violation" when the facility was complying with the schedule
- Violations for programs during quarters before the program even took effect (*e.g.*, MACT)
- Violations for Title V when the facility had applied for a Title V permit, but the state had not yet issued a permit — a facility cannot be in violation of a permit that has not been issued
- Violations of programs that do not apply to the facility
- Ongoing noncompliance past the date when the violation was resolved
- Incorrect address
- Primary SIC code incorrect
- Stormwater permit not listed
- Listing of eight quarters of noncompliance under the Clean Air Act for a permit number that does not exist at a facility
- A site that ceased operations a decade ago was still showing as "active" in the database

- Half of quarters incorrectly listed as "noncompliance"
- Incorrectly listed as in violation of MACT, PSD, NSR and SIP requirements
- Data entered into wrong field
- Declaring errors for effluent violations when none existed
- Information included for unrelated companies

As the list above illustrates, the ECHO database contains significant amounts of inaccurate data. Also, in many cases, it appears that the EPA has based its compliance determinations on incomplete data. The administration of the database should include a more comprehensive method for confirming that EPA information on state-delegated and managed programs is correct and up-to-date **before the data is placed on the site**. The EPA should provide companies the opportunity to review and, as necessary, correct information about their facilities before the information is disseminated on the Web site. The ECHO database must rely on states and the EPA being vigilant about error correction and accurate entry of data in the first place. The EPA must focus on the accuracy of data currently in the database and maintain a robust system for ensuring accuracy in future additions and updates. As a follow-up, the EPA must correct or remove erroneous data from the ECHO Web site quickly and efficiently.

The site is only supposed to contain permit, inspection, violation, enforcement and penalty information for the last two years. However, a very high percentage of errors stem from the fact that permit identifiers for facilities closed or sold prior to the two-year time frame have not been updated. Errors appear to be conveyed across all program areas. This misapplication of obsolete or incorrect information to current facilities is significantly skewing the summary and quarterly compliance data in the system.

The EPA should place the ECHO site "on hold" until the error rate is reduced substantially. The EPA should significantly reduce the error rate in the ECHO database before the data is released, as errors will have a significant impact on any ensuing data analysis for facilities. The site should also not be used by the EPA and state agencies to prioritize enforcement and compliance activities until the error rate is reduced.

The EPA must take full responsibility for the quality of information that it disseminates and must improve the quality of information about violations, enforcement actions and compliance activities.

The consequences of posting incorrect data or presenting data in a misleading fashion are significant. Misleading information creates an impression that industry has not made substantial progress in implementing environmental controls and improving environmental quality. It also falsely implies that the regulated community is not concerned with protecting public health, safeguarding the community and improving the environment. Errant compliance information also fosters the impression that state and EPA enforcement is weak or inadequate, particularly when this is not the case. Most importantly, incorrect or misrepresented information could mislead the public and misdirect public resources, which could be used more efficiently to protect the air, water and land.

ECHO is an EPA information product, and the EPA needs to take full responsibility for the quality of information that it is disseminating. The EPA must conduct thorough pre-dissemination review of all ECHO data, as required under EPA Information Quality Guidelines. These guidelines were designed to ensure and maximize the quality, objectivity, utility and integrity of information that the agency disseminates.

ECHO raises several questions about how the EPA collects and presents information about compliance and enforcement. How do the "High Priority Violator" or "Significant Noncompliance" designations relate to risk? What does ongoing noncompliance mean for one-time events such as spills or the failure to file a report? What stage must the EPA be in in its compliance process before it says a facility has a "violation"? Should reports about penalties capture penalties "assessed" or "final" penalties, which are usually much lower? If a court or administrative law judge throws out an enforcement action, should the compliance record be expunged from public Web sites such as ECHO? How will ECHO characterize "violations" found in inspections, or those discovered in company audits that are self-reported to state agencies or the EPA, that are quickly remedied? The EPA must consider these questions and others before moving forward with such a Web site.

Most importantly, the EPA must improve the quality of ECHO information about violations. The database should distinguish between alleged and actual violations instead of equating mere allegations of noncompliance with actual noncompliance. By failing to distinguish between the two, serious business and community implications arise for a facility that is cited as being in violation when it is not. Posting alleged violations on ECHO as if they were actual, demonstrated noncompliance creates the mistaken impression that the facility committed a violation. This contravenes basic principles of due process. As far as the data is concerned, the facility is guilty until proven innocent. This unfairly characterizes the facility as a "violator" and is misleading for the user of the data. Violations should not be listed as such in ECHO until a formal enforcement action is taken. Minor compliance observations should not be listed in ECHO unless they are not corrected in a reasonable period of time.

The EPA also needs to provide additional context on the number of obligations that exist within the major environmental programs. ECHO should not present single isolated violations as broader violations. The database does not distinguish between a single isolated instance of noncompliance within a program imposing a large number of compliance obligations and noncompliance with all program obligations (*e.g.*, noncompliance with an operating permit condition by a facility subject to thousands of such permitting conditions on a daily basis).

ECHO needs a mechanism for indicating when facilities remedy noncompliance. Even when a problem has been speedily corrected by a facility, the ECHO database may indicate ongoing noncompliance for up to two years (the period of record currently covered in ECHO's database).

The EPA needs to coordinate closely with states and acknowledge responsibility for all data on ECHO. The EPA must acknowledge that ECHO is an EPA information product

and the agency is responsible for all data summarized, analyzed, aggregated and disseminated by the EPA. State environmental agencies are the primary source of data for the ECHO Web site but because of differences in reporting among states and time delays with states to submit the compliance information to the EPA, misleading information may be present on the Web site.

The NAM is also concerned that the ECHO database may be vulnerable to misuse, as third parties have the ability to report an error. Third parties can represent themselves as employees, government contractors or government representatives and provide erroneous data. The EPA must be able to authenticate the role and authority of the individual reporting the error to the EPA.

In sum, misleading data affects the viewer's perception on companies' environmental performance and compliance. Inaccurate and misleading information imposes an unfair and unnecessary burden of proof on companies whenever an interested party acts on perceived violations. ECHO currently provides information about NAM member companies that is often inaccurate and misleading and the EPA must take full responsibility for the quality of the enforcement and compliance information presented on the Web site.

The EPA must improve its data correction procedures.

The NAM urges the EPA to improve its error-correction process. The EPA should establish timeframes for correcting errors, describe its error-correction process more clearly and flag information for which correction requests are pending. At the very least, the EPA needs to correct errors in the database promptly, find and fix the system flaws that caused them in the first place and improve the error correction process to maintain an accurate, fair and complete system.

The EPA's data correction process should include specific timetables for correcting errors. The database currently contains misleading and inaccurate data about facilities and no time frame is in place to address these problems. In addition, state agencies that are the primary source of compliance data for the Web site must make corrections whenever errors are reported, presenting an additional burden on understaffed and underfunded states.

The EPA also needs to provide a detailed description of the procedures to deal with data correction requests so that facilities can track the request through the entire process. Instead, the burden is on facilities to find errors, report them to the EPA and to check back to see if the errors were ever fixed. Given the time it takes the EPA and states to address data correction requests, ECHO should flag information for which correction requests are pending to avoid the unfair consequences of misleading and inaccurate data.

The EPA should provide companies the opportunity to review and, as necessary, correct information about their facilities before the information is disseminated on ECHO.

A major disadvantage of the ECHO database is that facilities are not given the opportunity to review and correct data before it is posted on the Web site. The EPA should give companies the opportunity to review facility data before it is posted. At a minimum, the EPA should contact a facility when any new or amended information is posted about a facility. This type of system would balance the EPA's responsibility to ensure that data it disseminates is correct with facilities' right to have correct information posted publicly.

Continual review of the Web site for errors takes away from the primary business of facilities and provides no added protection to the environment. The current system places a significant burden on companies — essentially requiring the company to conduct periodic review and quality control of data over which the companies have little or no control. In addition to this "review and correct" burden, ECHO also places a large burden on regulated entities to respond to public questions and potential citizen suits resulting from mistaken conclusions based on inaccurate or misleading information.

A Note on Security Concerns

Because of national security concerns of the significant threat of terrorist activity at facilities if certain information is allowed to be placed on the Internet, the NAM supports policies that keep this type of information from being disseminated publicly on its ECHO Web site, while allowing appropriate access to the Department of Homeland Security, local communities, and other affected parties.

Conclusion

In the pursuit of environmental and economic growth objectives, manufacturers and the general public look to the EPA as an essential source of information. Therefore, the EPA's approach to the collection, use and dissemination of environmental information is vital to the business sector. To this end, the EPA needs to ensure that the information it disseminates is accurate, objective and useful. Information quality is integral to the EPA's mission, as the agency's decisions based on that information influence all sectors of the manufacturing community. The NAM commends the EPA for attempting to make enforcement and compliance data available to the public, but is highly concerned with the accuracy, completeness and usefulness of the data currently featured in ECHO.

Complete and accurate information across the full range of environmental information sources is crucial to this effort. Environmental information originates from a broad spectrum of sources, including state and local governments, federal agencies, public interest groups and the private sector. Because of the individual objectives and missions of this heterogeneous collection of entities, enforcement and compliance information dissemination requires affected party involvement at an early stage, protection of

fundamental interests (*e.g.*, confidentiality, national security) and reasonable recourse for adverse dissemination and errors. The EPA has a real opportunity to advance a strong commitment to data quality through its ECHO Web site while protecting the interests of those it wishes to serve.

The NAM appreciates the EPA's efforts to bring companies with verifiable environmental performance problems into compliance and applauds the inclusion of the public in commenting on ECHO. While these NAM comments address four key issues of primary importance to the manufacturing community, we hope that the EPA will also review and act upon recommendations submitted by other business trade associations and individual companies. Questions should be addressed to Jeffrey Marks on the NAM staff at (202) 637-3176 or jmarks@nam.org